

Claims Report

United States Army Claims Service

Personnel Claims Note

Direct v. Consequential Damages Under Article 139

When claims are presented against soldiers under Article 139, Uniform Code of Military Justice,¹ for willful damage or wrongful taking of property, it is the responsibility of the Special Court Martial Convening Authority (SPCMCA), upon investigation and legal review,² to determine whether the claim is meritorious and how much money to assess against the offender's pay.³ Because victims often claim amounts exceeding the value of their property at the time of its loss, SPCMCAs must ensure they only approve claims for the actual amount of "damages sustained."⁴ The replacement cost of items must account for depreciation.⁵ Similarly, an assessment may not exceed the amount of direct damages suffered by the victim.⁶ Indirect or consequential damages may not be assessed.⁷

The upcoming revision to *Department of Army Pamphlet 27-162, Chapter 9*, sets forth two guidelines for determining whether damages may be assessed against an offender's pay. First, expenses necessary to repair a damaged item are compensable if they result directly from the offender's crime. This includes the reasonable cost of a rental car when the offender steals or willfully damages the victim's automobile. Expenses incurred to pursue an Article 139 claim, however, are consequential and, therefore, not compensable. This includes the cost of telephone calls, mileage, postage, copies, and attorney's fees. Consequential damage also includes loss of revenues or earnings, carrying charges, interest, and amounts attributed to inconvenience.

The following scenario demonstrates the application of these guidelines. Specialist Malcontent is angry at his squad leader, Staff Sergeant Hardcore, for supporting an administrative separation action currently pending against Malcontent. One afternoon after close of business, Hardcore drives to the

installation gymnasium to workout. Unbeknownst to Hardcore, Malcontent follows him at a distance. After Hardcore enters the building, Malcontent vandalizes Hardcore's automobile and steals his wallet, which Hardcore had placed under the passenger seat. Malcontent discovers that Hardcore has a savings account at the bank located on the installation. Malcontent locates Hardcore's account number and proceeds to the bank's "drive-thru" window, where Malcontent withdraws a substantial sum of cash from Hardcore's account.

Some time later, after discovering the perpetrator and the full extent of his loss, Hardcore files an Article 139 claim against Malcontent and lists the following damages: repair cost to the automobile, towing cost (drayage) to move the automobile to the repair shop, cost of a rental car for use while the automobile is being repaired, value of the cash stolen during the banking transaction, interest lost on the stolen principal, and the fee paid to the bank to develop photographs of the "drive-thru" transaction revealing the identity of the thief.

The repair cost is compensable provided it does not exceed the depreciated replacement cost of Hardcore's automobile. The drayage is compensable as an expense necessary to repair a damaged item. The rental cost also is compensable to the extent it does not exceed the rental cost of an automobile comparable in value to Hardcore's automobile. The stolen cash is compensable as direct damage, whereas the interest is not. The fee paid to the bank to develop the photographs is not compensable as it was incurred solely to pursue the Article 139 claim.

It is essential that investigating officers and approval authorities accurately assess damages when presented with meritorious Article 139 claims. This result is more likely when claims attorneys and claims judge advocates thoroughly brief investigating officers at the commencement of their investigation. Captain Metrey.

1. UCMJ art. 139 (1988).

2. When an Article 139 claim appears cognizable, an informal investigation is conducted pursuant to DEP'T OF ARMY, REG 15-6, BOARDS, COMMISSIONS, AND COMMITTEES: PROCEDURE FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS, ch. 4 (11 May 1988) and DEP'T OF ARMY, REG 27-20, LEGAL SERVICES: CLAIMS, para. 9-7(c)(1) (1 Aug. 1995) [hereinafter AR 27-20]. The findings and recommendation of the Investigating Officer are subject to legal review. AR 27-20, para. 9-7(e).

3. AR 27-20, *supra* note 2, para. 9-7(f).

4. UCMJ art. 139 (1988).

5. The Military Allowance List-Depreciation Guide should be used to determine depreciated replacement cost. DEP'T OF ARMY, PAMPHLET 27-162, LEGAL SERVICES: CLAIMS, para. 10-5(e)(3) (15 Dec. 1989) [hereinafter DA PAM 27-162].

6. AR 27-20, *supra* note 2, para. 9-6(c).

7. *Id.*

1996 Table of Adjusted Dollar Value

This table updates the *1995 Table of Adjusted Dollar Value* (ADV) previously printed in *The Army Lawyer*, April 1996, at page 54. In accordance with *Army Regulation 27-20*, paragraph 11-14c, and *Department of Army Pamphlet 27-162*, paragraph 2-39e, claims personnel should use this table *ONLY* when no better means of valuing property exists.

Year Purchased	Multiplier for 1996 Losses	Multiplier for 1995 Losses	Multiplier for 1994 Losses	Multiplier for 1993 Losses	Multiplier for 1992 Losses
1995	1.03				
1994	1.06	1.03			
1993	1.09	1.05	1.03		
1992	1.12	1.09	1.06	1.03	
1991	1.15	1.12	1.09	1.06	1.03
1990	1.20	1.17	1.13	1.11	1.07
1989	1.26	1.23	1.20	1.17	1.13
1988	1.33	1.29	1.25	1.22	1.19
1987	1.38	1.34	1.30	1.27	1.24
1986	1.43	1.39	1.35	1.32	1.28
1985	1.46	1.42	1.38	1.34	1.30
1984	1.51	1.47	1.43	1.39	1.35
1983	1.57	1.53	1.49	1.45	1.41
1982	1.63	1.58	1.54	1.50	1.45
1981	1.73	1.68	1.63	1.59	1.54
1980	1.90	1.85	1.80	1.75	1.70
1979	2.16	2.10	2.04	1.99	1.93
1978	2.41	2.34	2.27	2.22	2.15
1977	2.59	2.51	2.45	2.38	2.32
1976	2.76	2.68	2.60	2.54	2.47
1975	2.92	2.83	2.75	2.69	2.61
1974	3.18	3.09	3.01	2.93	2.85
1973	3.53	3.43	3.34	3.26	3.16
1972	3.75	3.65	3.55	3.46	3.36
1971	3.87	3.76	3.66	3.57	3.46
1970	4.04	3.93	3.82	3.72	3.62

NOTES:

1. Do not use this table when a claimant cannot substantiate a purchase price. Additionally, do not use it to value ordinary household items when the value can be determined by using average catalog prices.
2. To determine an item's value using the ADV table, find the column for the calendar year the loss occurred. Then multiply the purchase price of the item by the "multiplier" in that column for the year the item was purchased. Depreciate the resulting "adjusted cost" using the Allowance List-Depreciation Guide (ALDG). For example, the adjudicated value for a comforter purchased in 1990 for \$250, and destroyed in 1995, is \$219. To determine this figure, multiply \$250 times the 1990 "year purchased" multiplier of 1.17 in the "1995 losses" column for an "adjusted cost" of 292.50. Then depreciate the comforter as expensive linen (item number 88, ALDG) for five years at a five-percent yearly rate to arrive at the item's value of \$219 (*i.e.*, $\$250 \times 1.17 \text{ ADV} = \$292.50 @ 25\% \text{ depreciation} = \219).
3. The Labor Department calculates the cost of living at the end of a year. For losses occurring in 1997, use the "1996 losses" column.
4. This year's ADV table only covers the past 25 years. To determine the ADV for items purchased prior to 1970 or for any other questions concerning this table, contact Mr. Lickliter, United States Army Claims Service, telephone (301) 677-7009 ext. 313. Ms. Holderness and Mr. Lickliter.